

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

RICHARD T. MARTINO,)

[DOB: XX/XX/59],)

DANIEL D. MARTINO,)

[DOB: XX/XX/50],)

Defendants.)

No. _____

Count One (Both Defendants)

18 U.S.C. § 371

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Two and Three

(Both Defendants)

18 U.S.C. §§ 1341 & 2

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Four and Five

(Both Defendants)

18 U.S.C. §§ 1341 & 2

[NMT: Twenty Years Imprisonment,

\$250,000 Fine, Five Years

Supervised Release, Plus \$100

Special Assessment]

Counts Six, Seven and Eight

(Both Defendants)

18 U.S.C. §§ 1343 & 2

[NMT: Five Years Imprisonment,

\$250,000 Fine, Three Years

Supervised Release, Plus \$100

Special Assessment]

Counts Nine and Ten

(Both Defendants)

18 U.S.C. §§ 1343 & 2

[NMT: Twenty Years Imprisonment,

\$250,000 Fine, Five Years

Supervised Release, Plus \$100

Special Assessment]

Count Eleven
(Criminal Forfeiture)
(Both Defendants)
18 U.S.C. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

1. At all times relevant to this Indictment:

(a) Cass County Telephone Company, LP (hereinafter CassTel) is a limited partnership located in Peculiar, Missouri. CassTel's principal business is providing telecommunications services to approximately 8,000 customers in Cass County, Missouri, as well as a small number of customers in the State of Kansas. CassTel is primarily (99%) owned by Local Exchange Company, LLC (hereinafter LEC).

(b) Local Exchange Company, LLC (LEC) is a limited liability company registered in Maryland. The company consists of approximately 42 persons, trusts and organizations which own "units" of the company. Defendant RICHARD T. MARTINO controlled 12 units of LEC through various trusts he had established. Defendant DANIEL D. MARTINO owned or controlled 18 units of LEC through various trusts he had established.

(c) The National Exchange Carriers Association (hereinafter NECA) is a not-for-profit organization created by the Federal Communications Commission (FCC) pursuant to 47 C.F.R.

§ 69.601. NECA's purpose is to prepare and file access charge tariffs on behalf of all telephone companies that do not file separate tariffs. A tariff is the rate charged by one telephone company to another telephone company for access and use of that company's telephone system in the course of interstate telecommunications. 47 C.F.R. § 69.601(c) requires that all data submissions made to NECA be accompanied by a certification statement from an officer or employee responsible for the overall preparation of the data submission that "the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission." 47 C.F.R. § 69.601(c) further provides that "Persons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the United States Code, Title 18, Section 1001."

NECA collects money from individual telephone companies, known as "local exchange carriers" under 47 C.F.R., Part 69. NECA distributes the funds back to local exchange carriers based upon whether the individual exchange carrier has costs above the national average cost as determined by NECA.

(d) The Universal Service Administrative Company (hereinafter USAC) is a not-for-profit corporation established to administer the Universal Service Fund (hereinafter USF). The USF was established by the FCC to subsidize high cost rural telephone

systems. Pursuant to C.F.R § 36.611, each local exchange carrier must submit information to NECA by July 31st of each year which sets forth the allowable expenses of the carrier in the previous calender year. Based upon this submission of expenses, the USAC makes a determination whether rural telephone companies are eligible for cost subsidies from the USF. The subsidies are disbursed by USAC to NECA to be paid out to the rural telephone companies the following calender year.

(e) The Overland Data Center (ODC) was a company located in Overland Park, Kansas, that provided software support and information technology support to CassTel.

(f) F.S.E. Consulting Corp. (FSE) was a corporation located in New York, New York, which controlled the finances of ODC.

(g) Defendant RICHARD T. MARTINO was at all times relevant to this Indictment was the President and owner of Mical Properties, Inc., and in control of LEC, CassTel, ODC and FSE. Defendant RICHARD T. MARTINO had the ultimate decision making authority at LEC, CassTel, ODC and FSE.

(h) Defendant DANIEL D. MARTINO was the President of FSE.

(i) Kenneth M. Matzdorff was at all times relevant to this Indictment an employee of LEC. At various times throughout

the conspiracy, Kenneth M. Matzdorff was the President of CasSTel and LEC.

2. From on or about January 1998, to on or about July 2004, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, and Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, did knowingly conspire, combine, confederate and agree together and with each other to violate the laws of the United States of America, specifically, false statements, mail and wire fraud in violation of Title 18, United States Code, Sections 1001, 1341 and 1343.

MANNER AND MEANS

The manner and means by which the conspiracy operated included the following:

3. From on or about January 1998, and continuing to on or about July 2004, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known and unknown to the Grand Jury, devised and intended to devise a scheme and artifice to defraud money from the USF and NECA.

4. Defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff and others agreed to create false and fictitious ODC invoices to CasSTel. The payments by CasSTel to ODC based upon the fictitious invoices totaled approximately

\$11 million between 1998 and 2003. The total value of the actual services performed during 1997 to 2002 by ODC for CassTel is estimated at \$240,000.

5. Defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others agreed to have CassTel, and later LEC, charge ODC for false and fictitious "consulting" and "management" fees. The payments from ODC to CassTel and LEC totaled approximately \$11 million from 1998 to 2003.

6. The payments from CassTel to ODC and from ODC to LEC were coordinated by defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known to the Grand Jury that were employed by FSE and Mical in New York, New York and by LEC in Peculiar, Missouri. The payments were also coordinated by outside accountants for defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO and others.

7. The fictitious ODC expenses were included by CassTel as allowable expenses in the submissions to NECA for the calculation by USAC of the Universal Service Fund payments to CassTel. The false and fictitious expenses resulted in an overpayment by USAC to CassTel of approximately \$3.5 million from 1999 to 2004.

8. The fictitious ODC expenses were included as allowable expenses in the cost studies filed by CassTel with NECA for determination of the payments to CassTel from the "cost pools" administered by NECA. The false and fictitious expenses resulted

in an overpayment by NECA to CassTel of approximately \$5.4 million from 1998 to 2003.

OVERT ACTS

In furtherance of the conspiracy, the following Overt Acts, among others, were committed in the Western District of Missouri and elsewhere.

1. On or about January 1998, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other LEC shareholders met to review the 1998 budget for CassTel. At that meeting, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and other persons known to the Grand Jury agreed to inflate the expenses of CassTel in order to generate additional capital to expand the assets and services of CassTel. The additional capital would be received from the increased payments from the USF and NECA based upon the fictitious ODC expenses reported by CassTel.

2. On or about July 29, 1999, CassTel sent the 1998 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

3. On or about July 31, 2001, CassTel sent the 2000 USF submission to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

4. On or about September 5, 2001, CassTel sent the 2000 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

5. On or about October 22, 2002, CassTel sent the 2001 cost study certification form to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

6. On or about October 28, 2003, CassTel sent the 2002 cost study to NECA. The submission was sent via Federal Express from Kansas City, Missouri, to St. Louis, Missouri.

7. On, about and between January 1998, and September 2004, NECA sent to CassTel, via wire transfers, approximately \$36,906,078.29.

8. On or about February 29, 2000, NECA, via Mellon Bank, NA, wire transferred \$819,927 to the United Missouri Bank (UMB) account of CassTel.

9. On or about September 29, 2000, NECA, via Mellon Bank, NA, wire transferred \$891,074 to the United Missouri Bank (UMB) account of CassTel.

10. On or about September 28, 2001, NECA, via Mellon Bank, NA, wire transferred \$819,482 to the United Missouri Bank (UMB) account of CassTel.

11. On or about August 30, 2002, NECA, via Mellon Bank, NA, wire transferred \$798,431 to the Community Bank of Raymore account of CassTel.

12. On or about April 30, 2003, NECA, via Mellon Bank, NA, wire transferred \$606,118.99 to the Community Bank of Raymore account of CassTel.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FIVE

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for Counts Two, Three, Four, and Five.

On or about the dates specified below, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, having knowingly devised a scheme and artifice for obtaining money by means of false and fraudulent pretenses, representations and promises, did, for the purpose of executing the scheme and artifice, knowingly cause to be deposited USF submissions and NECA cost studies to be sent or delivered by Federal Express, a private and commercial interstate carrier, from the Cass County Telephone Company, Peculiar, Missouri, to NECA in St. Louis, Missouri.

<u>Count</u>	<u>Date</u>	<u>Document Submitted</u>
2	07/31/2001	2000 USF submission
3	09/05/2001	2000 NECA cost study
4	10/22/2002	2001 NECA cost study certification form
5	10/28/2003	2002 NECA cost study

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS SIX THROUGH TEN

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for Counts Six, Seven, Eight, Nine, and Ten.

On or about the dates specified below, in the Western District of Missouri and elsewhere, defendant RICHARD T. MARTINO, defendant DANIEL D. MARTINO, Kenneth M. Matzdorff, and others known and unknown to the Grand Jury, having knowingly devised a scheme and artifice for obtaining money by means of false and fraudulent pretenses, representations and promises, transmitted or caused to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures and sounds for the purpose of executing said scheme and artifice to defraud. The interstate wire communications were wire transfers of funds from Mellon Bank, NA, in Pennsylvania to Cass County Telephone bank accounts in Missouri.

<u>Count</u>	<u>Date</u>	<u>Amount of Wire Transfer</u>
6	02/29/2000	\$819,927
7	09/29/2000	\$891,074
8	09/28/2001	\$819,482
9	08/30/2002	\$798,431
10	04/30/2003	\$606,118.99

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT ELEVEN

The allegations contained in Count One of this Indictment are realleged and incorporated by reference for the purpose of alleging a forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c). Defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO shall forfeit to the United States \$8.9 million in U.S. currency for which they are jointly and severably liable and all "shares" or "units" of LEC, which constitute or are derived from the proceeds traceable to the violation incorporated by reference in this Count.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

If any of these assets, as a result of any act or omission of the defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any property of defendant RICHARD T. MARTINO and defendant DANIEL D. MARTINO up to the value of the assets set-out above, including but not limited to the defendants' shares or units of LEC.

/s/January 25, 2005
DATE

/s/Darrell P. Yokley
FOREPERSON OF THE SPECIAL GRAND JURY

/s/Paul S. Becker
Paul S. Becker
Assistant United States Attorney
Western District of Missouri
Chief, Organized Crime Strike Force Unit

/s/Bruce E. Clark
Bruce E. Clark, #31443
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit

/s/Jess E. Michaelson
Jess E. Michaelson, #52253
Assistant United States Attorney
Western District of Missouri
Organized Crime Strike Force Unit